



NJ Division on Civil Rights OUTLOOK

New Jersey Department
of Law & Public Safety

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CIVIL RIGHTS

From the Director's Desk: A Report from the Division on Civil Rights

Welcome to the first installment of our Division on Civil Rights Newsletter. In an effort to reach out to New Jersey's diverse communities, we offer this newsletter so you can meet us, and learn about our new initiatives and the direction we plan to take in 2003.

The Division on Civil Rights ("DCR") is the state's agency responsible for enforcement of New Jersey's Law Against Discrimination ("LAD") and Family Leave Act ("FLA"). As such, this agency entertains complaints by individuals who believe they may have been victims of discrimination in employment, housing, and places of public accommodation. DCR files complaints, conducts investigations, litigates matters, promulgates regulations, and participates actively in community education and training programs.

The DCR is one of the 10 Divisions in the Department of Law and Public Safety overseen by New Jersey Attorney General David Samson. We have a very capable and experienced staff working at our five offices located in Atlantic City, Camden, Newark, Paterson, and Trenton.

The statutory mission of the DCR is to eradicate unlawful discrimination in New Jersey. Unlawful discrimination hurts everyone, and we must aim to stop it in our places of employment, housing, and places of public accommodation.

The only way to eradicate discrimination in New Jersey is to be extremely aggressive and proactive, in both enforcement and education efforts.

At the same time the Division is engaging in more aggressive and proactive enforcement of our anti-discrimination laws, we are actively engaging in aggressive education programs, to teach employers of their obligations and inform employees what actionable discrimination really is.

To this end, we have implemented the following at DCR:

- Launched a new DCR Web site (www.njcivilrights.org) which includes information in Spanish and DCR's orders and regulations;
- Created a Special Investigations Unit to investigate "pattern and practice" or "systemic discrimination";
- Reduced dramatically the backlog of cases under investigation;
- Joined with various state agencies to combat discrimination through inter-agency cooperation; and
- Established new policy to minimize extensions and increase enforcement of subpoenas.
- Hosted interagency Community Roundtables in Plainfield and Paterson;
- Planned new training programs for 2003, including fee-based private training;
- Doubled training staff;



Director Vespa-Papaleo at
DCR's Trenton Office.

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DCR Information



From the Director's Desk: A Report from the Division on Civil Rights (*cont.*)

Information about our Division is available on our new Web site, located at www.njcivilrights.org

These are but a few of the many new areas that the Division will be exploring and emphasizing as we move forward together. It is important that the members of the bar, constituency groups, apartment owners, and individuals who appear before the DCR understand our process and procedures, and share their thoughts and insight as well. As someone who only recently left private law practice to take on this new challenge, my goal is to help make the practice of the Division on Civil Rights more "user-friendly", while ensuring that we work together to eradicate unlawful discrimination. We look forward to working with you in that effort.

I hope you enjoy this newsletter!

Agency Overview

The Division on Civil Rights (DCR) is part of the New Jersey Department of Law and Public Safety (L&PS). It is the agency responsible for investigating discrimination complaints and eradicating illegal discrimination in New Jersey by enforcing our anti-discrimination laws and teaching employers and housing providers how to prevent discrimination.

We have fought unlawful discrimination for more than 50 years. New Jersey was the first state in the nation to investigate civil rights complaints, and continues to be in the forefront of civil rights protection with one of the most comprehensive anti-discrimination laws in the country.

The Division's work is focused in three major areas: employment, housing and public accommodation discrimination. The Division also enforces the New Jersey Family Leave Act. If you are interested in filing a discrimination complaint, or have any questions concerning the Division's work, please visit one of our five regional offices, or call (609) 292-4605 or visit our Web site at www.njcivilrights.org for additional information.

In addition to investigating discrimination complaints, the Division is also responsible for educating the public on matters concerning discrimination. Division publications addressing such topics as age, race, sex, disability, pregnancy and marital status discrimination are available upon request. The Division provides private training to employers at an affordable rate, in addition to free workshops and other outreach activities available to the general public.

Did you know...

...that it violates the Law Against Discrimination (LAD) to discriminate against employees who wear or display the American flag at their work stations?

...that it violates the Law Against Discrimination (LAD) to discriminate against tenants based on source of lawful income or age of children under 18 years of age?

...that it violates the LAD to discriminate against employees based on genetic information or refusing genetic testing?

...that violators of the LAD are penalized \$10,000.00 for their first offense, \$25,000.00 for a second offense (within 5 years), and \$50,000.00 for a third offense (within a 7 year period)?

...that the statute of limitations begins on the first day after termination, and not the date of notification of future discharge?

...that DCR cases and settlement agreements are subject to disclosure under the Open Public Records Act (OPRA)?

...that Americans with Disabilities Act (ADA) federally approved publications can be accessed at www.adata.org/pubs.html?

...that the NJ Legislature Web site www.njleg.state.nj.us provides access to live proceedings, statutes, chapter laws, constitution, publications and Bill searches?



The Division Readopts and Amends Rules of the Family Leave Act

Last September, the Division on Civil Rights readopted and amended the rules necessary for implementation and enforcement of the state's Family Leave Act (FLA) to provide that for purposes of defining whether an employee is eligible for leave under the FLA, base hours shall include hours for which the employee received workers' compensation. This amendment follows an analysis of the Appellate Division in Kenney v. Meadowview Nursing and Convalescent Center, 308 N.J. Super. 565 (App. Div. 1998), which relied on the language included in the Workers' Compensation Act to hold that such hours should be included in base hours under the FLA. The amendment also changes the definition of base hours to include those overtime hours for which an employee is paid additional compensation. This amendment is consistent with the Federal Family and Medical Leave Act (FMLA), which excludes only those hours for which an employee is paid but performed no work, as defined in the Federal Fair Labor Standards Act. The amendment also clarifies that, although an employer is not required to include hours for which an employee received other types of compensation, the employer may voluntarily choose to include such hours. The revised rules are published as N.J.A.C 13:14-1.6, and were adopted on September 5, 2002.



Division Offering Fee-Based Private Training

In January 2003, the Division began fee-based private training. The Division trains thousands of people a year throughout the State and will continue to provide training in the following areas:

NJ Law Against Discrimination/Know Your Rights; Employment Discrimination & How to File a Discrimination Complaint; Sexual Harassment; Disability Discrimination; NJ Family Leave Act (FLA); Diversity Awareness; Housing Discrimination.

Private training is available for management executives, employees, elected officials, private and public sector employers, attorneys, housing providers, non-profit agencies, advocacy groups, etc. The training sessions will be held for a minimum of two hours and must include at least 15 participants per session. The fee schedule may be subject to change based on the scheduled time frame per session and number of participants.

For more information on the Bureau's fee schedule and rates per session, you may contact Assistant Director of the Bureau of Prevention and Community Relation Philip E. Freeman at 609-292-2918 or at phil.freeman@lps.state.nj.us.

LAD Amended to Include Prohibition of Housing Discrimination Based on Source of Income

Governor James E. McGreevey recently signed legislation (A-710) which prohibits landlords from discriminating against tenants based upon a tenant's source of lawful income. With this amendment, tenants who receive federal Section 8 vouchers and other government rental assistance, or who rely on alimony or child support payments, cannot be denied housing because of their sources of income. However, a landlord does have the right to verify that a prospective tenant is otherwise qualified to rent, and to base rental decisions on the landlord's legitimate concern that the prospective tenant has a reliable and steady source of income. Thus, a landlord may lawfully refuse to rent to a prospective tenant based on non-discriminatory reasons, such as poor credit history or bad references.

Landlords who discriminate against a tenant in violation of this amendment may face significant penalties. There is a maximum fine of \$10,000 for any single violation within a five year period, a maximum fine of \$25,000 for one other violation that occurs within five years of the first charge, and a maximum fine of \$50,000 for any two or more violations within seven years of the first charge. Additionally, attorney fees may be awarded to the Division if the Division's attorneys prevail at hearing.

"Landlords who discriminate against a tenant in violation of this amendment may face significant penalties"



DCR Participates as “Friend of Court” in Kidney and Breast Cancer Cases

In a decision handed down by the Appellate Division on November 6, 2002, it was held that for purposes of the Law Against Discrimination (LAD), stringent standards used under federal law do not apply in analyzing a claim of handicap discrimination.

“The court found little question that cancer could qualify as a handicap under the LAD”

In the matter of Soules v. Mount Holiness Memorial Park & Gene Dellago(1), the State, represented by DAG Donna Arons, intervened as *amicus curiae*, urging the reversal of a trial court’s holding that the plaintiff had failed to satisfy his burden of proving disability because his kidney cancer was a temporary condition from which he ostensibly recuperated. Following his cancer diagnosis, plaintiff had surgery to remove one kidney, adrenal glands, lymph nodes and one rib. Relying solely on federal law, the trial judge concluded that a temporary inability to work during recuperation is not a protected disability. The Appellate Division held, however, that in contrast to federal law, the LAD does not require that a disability restrict any major life activities to any degree. State law is broader than federal in this area, and the LAD encompasses within the definition of handicap those who do not have a substantial or permanent impairment at the time of the alleged discrimination. The court found “little question that cancer qualifies as a handicap under the LAD.”

The Division also joined in the appeal of a lower court decision that a school employee with breast cancer is not handicapped under the LAD. In Harris v. Middlesex County College(2), the plaintiff brought a discrimination action in federal and state court against her employer alleging that her employer discriminated on the basis of handicap, failure to accommodate, and intentional infliction of emotional distress. She was employed by the defendant as an assistant professor for 17 years. During that time, she underwent breast reduction surgery and a mastectomy with reconstructive surgery. She had sought a promotion to associate professor on numerous occasions but was denied because her supervisor failed to recommend the promotion.

The Federal District Court granted defendant’s motion for summary judgment, dismissing plaintiff’s federal claims with prejudice and the state claims without prejudice. In Superior Court, the trial judge also dismissed her complaint, finding that she failed to establish that she was a member of a protected class as defined in the LAD. Although the trial judge recognized that the plaintiff had a mastectomy, he found that she had not suffered a recurrence of the cancer. He also rejected plaintiff’s claim that a mastectomy qualified as an “amputation” under N.J.S.A. 10:5-5(q). He further found that her claims under the LAD were barred by the doctrines of *res judicata* and collateral estoppel because the federal court had already addressed the issues raised by the plaintiff. Plaintiff filed a motion for reconsideration. The trial judge, however, denied it reiterating plaintiff’s failure to establish the requisite elements for a *prima facie* case. He expressly rejected her argument that her mastectomy automatically placed her under the protections of the LAD.

On appeal, the Division joined the plaintiff by filing an *amicus curiae* or “friend of the court” brief arguing that the trial court had erred. Specifically, the Division argued that it was an error to require the plaintiff to demonstrate that she suffered from a severe or substantially limiting condition in order to qualify as “handicapped.”

The Appellate Division found that a mastectomy qualified as an amputation under the LAD. The court stated that the LAD’s protections are broad and “may include a person with breast cancer even if she is treated with the less radical alternatives available to breast cancer patients.” In addition, the Appellate Division ruled that the plaintiff met the first prong of a *prima facie* case of disability discrimination because it was undisputed that she had breast cancer, underwent subsequent treatment for the disease, and her employer was aware of the mastectomy.

“The Appellate Division found that mastectomy qualified as an amputation under the LAD”

1. Soules v. Mount Holiness Memorial Park et al, A 5135-00T2 (2002).



New Web Site Launched

The New Jersey Division on Civil Rights launched a new Web site on September 9, 2002. Under the leadership of Assistant Director Philip E. Freeman, MIS Manager Ralph Menendez, William Scheckel, IT Manager Diane L. Fell, and Web Developer Carl W. Ruopp, Jr. the DCR's second-generation Web site was born.

Located at www.njcivilrights.org, the DCR changed the look and content of its Web presence with an aim toward improving communications with the public. Program initiatives are now highlighted, DCR news provided, and links to other agencies and DCR affiliations

are now available. The new Publications section enables a visitor to view, print, or download "fact sheets" on various types of discrimination, including age, race, or disabilities, and the fact sheets are now available in both English and Spanish.

One of the most important new additions is the publication of all the Division's new Director's Orders signed since July 1, 2002. The user-friendly Web site features a drop-down, "how-to" menu which includes options such as filing a complaint, contacting the DCR, knowing when your rights are violated, and learning about the DCR's programs. The menu also

includes views of the Law Against Discrimination and the Family Leave Act, and a section addressing frequently asked questions (FAQ).

DCR programs are also provided at a state-of-the-art, fade-in section which will be regularly updated and presently highlights the DCR's mediation program, the DCR's initial series of community "round table meetings," and the DCR's outreach initiatives.

Give us a visit and remember, we are only a click away!



Snapshot of the new Civil Rights Web Site.

"DCR changed the look and content of its Web presence with an aim toward improving communications with the public"

www.njcivilrights.org

NJ Commission on Civil Rights Hosts Plainfield Community Roundtable

On September 15, 2002, the New Jersey Commission on Civil Rights sponsored a community roundtable discussion entitled: "Building Positive Multi-Cultural and Ethnic Relationships at the Plainfield campus of Union County Community College in North Plainfield.

There were 16 community leaders in attendance from Middlesex, Hunterdon, and Union counties in addition to several participants from the Plainfield area. Division Director J. Frank Vespa-Papaleo and Commission Chairperson Felton Lingo led the roundtable discussion after presentations were given by the Division's executive staff highlighting recent developments involving enforcement initiatives, legal issues, and community relations activities.

The participants also expressed their concerns in the areas of education, lack of employment opportunities, affordable housing, and alleged the prevalence of systemic discrimination in the Plainfield area. There was an overall consensus there is a need for continuous outreach and education on Civil Rights matters for the citizens of Plainfield.



DCR Director Vespa-Papaleo with EEOC Newark Area Director at the Paterson Community Roundtable

“...Roundtable discussion on Civil and Human rights initiatives for the 21st century.”



DAG Charles Cohen speaking at the Paterson Community Roundtable

Division Sponsors Joint Forum with Federal and State Agencies in Paterson

Fifty-seven community leaders representing six counties in northern New Jersey met at the Hamilton Club in downtown Paterson for a community roundtable discussion on Civil and Human Rights initiatives for the 21st century. The other agencies that participated included the Equal Employment Opportunity Commission (EEOC), NJ Office of Counter Terrorism, and the NJ Office of Bias Crime. The featured speakers included: J. Frank Vespa-Papaleo, Esq., Director of the Division on Civil Rights; Marie M. Tomasso, District Director-EEOC, Philadelphia District Office; Hestor Agudosi, Chief of the Office on Bias Crimes. A representative of the NJ Office of Counter Terrorism rounded off the panel. The Assistant Directors for the Division, and the Newark EEOC Field Office Manager and District

Program Analyst gave presentations on the direction of current civil rights law enforcement and educational activities. There was an emphasis on working in conjunction with other state agencies and communities to combat unlawful discriminatory practices, reduce bias crime, and prevent terrorism in New Jersey.

The four agency directors spoke about their priorities in the new millennium. Director Vespa-Papaleo emphasized that the Division will target predatory lenders that prey on minority communities; re-establishing a housing unit to focus on housing discrimination in New Jersey; and expanding the overall prevention and outreach efforts of the Division.

Director Tomasso said her agency's current initiatives include providing outreach services to the thousands of

immigrants who are now moving into New Jersey and Pennsylvania by establishing closer relationships with Latin American countries and developing literature on frequently asked questions to accommodate immigrant populations.

Ms. Agudosi said the Bias Crime Office intends to continue aggressively investigating and prosecuting bias-related crimes, and to expand its efforts through a number of planned initiatives.

These include training statewide in the areas of harassment, intimidation, and bullying of students because of race religion, ethnicity, color, sexual orientation, and disability.

MORE NEWS

**Multiple Dwelling Report Rule forms
now available on the Internet:
www.njcivilrights.org**



Mediation: A Successful Alternative

In February 2003, the Division on Civil Rights will celebrate its second year of providing a formal Mediation Program. The goal of the Mediation Program is to resolve complaints between parties at an early stage in order to minimize costs related to investigations and litigation.

Mediation is free and, since the parties to a mediation actually develop the terms of the resolution, parties are generally more satisfied with the outcome than those whose disputes are resolved by the issuance of a judgment.

From all indications, the Civil Rights Mediation Program has been a great success. “The Division’s Mediation Unit has successfully negotiated agreements in 67 percent of the cases mediated by the unit”, explained DCR Director Frank Vespa-Papaleo. “There is also every indication that the settlement rate continues to increase.”

Clearly, the development and implementation of a mediation program has dramatically, and favorably, altered the processing of discrimination complaints in New Jersey. Mediation has helped to minimize litigation expenses and speed up the resolution of cases.

The DCR’s Mediation Unit consists of three full time professional mediators. All mediators have received certification from the NJ Institute for Dispute Resolution and the Equal Employment Opportunity Commission’s Employment Mediation Alternative Dispute Resolution Program.



About the OUTLOOK Staff

The Division would like to recognize staff that participated on the OUTLOOK Newsletter Committee and to thank them for contributing news articles that made the publication of this newsletter possible:

J. Frank Vespa-Papaleo, Esq., Director; Philip E. Freeman, Assistant Director/Newsletter Committee Chairman; Sue Sobel Gottesman, Esq., Assistant Director, Bureau of Policy; Charles Cohen, Deputy Attorney General, Division of Law; Richard Salmastrelli, Administrative Analyst, Office of the Director; Doris J. Taylor, Lead Mediator, Mediation Unit; Esther Nevarez, Community Relations Coordinator; Veronica Andrews, Investigator, Paterson region; John Beauchamp, Investigator, Camden region; Marlyn Soto, Investigator, Atlantic City region; Scott Struther, Investigator, Newark region.

The Division would also like to express its appreciation to Diane Fell, IT Manager of the Department of Law and Public Safety’s CASS IT Unit, and to Carl W. Ruopp, Jr., Web Developer, who designed and formatted the newsletter.



**New Jersey Department of
Law & Public Safety**



Trenton Administrative & Regional Offices:
140 East Front Street
6th Floor
PO Box 089
Trenton, NJ 08625-0089

Phone: 609-292-4605
Fax: 609-984-3812
TTY: 609-292-1785
Email: dcrwebinfo@lps.state.nj.us

Atlantic City: 609-441-3100
AC Fax: 609-441-3578
AC TTY: 609-441-7648

Camden: 856-614-2550
Camden Fax: 856-614-2568
Camden TTY: 856-614-2574

Newark: 973-648-2700
Newark Fax: 973-648-4405
Newark TTY: 973-648-4678

Paterson: 973-977-4500
Paterson Fax: 973-977-4511
Paterson TTY: 973-977-1955

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We're on the Web!
www.njcivilrights.org

Director J. Frank Vespa-Papaleo
NJ Department of Law & Public Safety
NJ Division on Civil Rights
140 East Front Street, 6th Floor
PO Box 089
Trenton, NJ 08625-0089
www.njcivilrights.org

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